

Office for Professional Body Anti-Money Laundering supervision: Sourcebook update (CP22/16)

The IFA welcomes the opportunity to comment on the [consultation paper](#) published on 11 August 2022.

We would be happy to discuss any aspect of our response and to take part in any further consultations in this area.

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The IFA is a full member of the International Federation of Accountants (IFAC) the global accounting standard-setter. We are recognised by HM Treasury to supervise our members for the purposes of compliance with the Money Laundering Regulations, and by the Financial Services Authority in the Isle of Man.

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General comments

1. The Institute of Financial Accountants (IFA) is pleased to have the opportunity to respond to this formal consultation. On 8 June, the IFA received an invitation to a pre-consultation discussion on 14 June. Given the short notice, no IFA representative was available to attend and, therefore, our understanding of that discussion has been through the feedback kindly provided to us by one of OPBAS's Senior Associates.
2. The sourcebook must work for professional body supervisors (PBSs) of all sizes – with a view to resources, the distribution of costs among a body's supervised population, fair competition, and the nature of the PBS and its members' work.
3. Previously, OPBAS had sought the PBSs' views on what works well in the sourcebook and what could work better, recognising the need to strike a balance between providing further guidance that is helpful to PBSs, while continuing to encourage PBSs to apply the requirements to their own circumstances in an effective, risk-based way. Where more detail in the sourcebook entails (or even implies) more prescription concerning the 'correct' means of achieving effective outcomes, there is a move away from basic principles and innovation in anti-money laundering (AML) supervision. Such moves are counterproductive, as they tend to obscure the required outcomes.
4. The means of achieving effectiveness will be specific to each PBS and we are concerned that the examples provided will be used as models in all cases. However, we believe the use of examples has value, provided it is highlighted that they will not always be relevant to all PBSs.
5. By providing 'additional guidance for PBSs on [OPBAS's] **expectations**' [emphasis added],¹ there may be an assumption that the PBSs are required to meet those expectations and so achieve the required outcomes in the same way. We also note that, in two places, the consultation paper describes the legal and accountancy sectors as a single sector. Clearly, there is a risk that some of OPBAS's expectations will be inappropriate for some PBSs with the result that innovation will be stifled and there will be a loss of focus on the required outcomes of AML supervision.
6. We note the comment that OPBAS has 'found a mixed picture when it comes to how effectively PBSs meet [their AML obligations]'.² This is followed by a casual reference in paragraph 2.3 to 'the progress that PBSs have made',³ but there is very little in the public domain that recognises that progress. Most of the PBSs are experienced regulators and experts in their field. In our opinion, OPBAS must be clearer about its own role and responsibilities and more transparent regarding its strategy for meeting its objectives.
7. Under the heading 'What we want to change', the consultation paper states 'We aim to improve the consistency and effectiveness of PBSs' anti-money laundering supervision ...'. This has always been the stated aim of OPBAS, which suggests limited progress since it was established in 2018. At best, the consultation paper does not recognise that improvements have, in fact, been made over recent years. Without a clear understanding of the past achievements of OPBAS and the PBSs, it is unlikely that the proposed changes would have a positive impact on the future of AML supervision.
8. We question the inclusion of case studies to illustrate 'more effective' and 'less effective' approaches as these will be relevant at a particular point in time and are likely to become less relevant over the life of the sourcebook.
9. We suggest that, for clarity, OPBAS should refer consistently to 'supervised populations' rather than 'members' as currently drafted.

¹ CP22/16, page 5

² CP22/16, page 3

³ CP22/16, page 5

Questions raised in the consultation paper

Question 1: Do you agree that we should add the new chapters we have proposed to the OPBAS sourcebook? If not, please explain why. Is there different content you think we should include?

10. If it is determined that changes to the sourcebook are necessary, there is some value in the new chapters (1, 2 and 11). But any guidance should be succinct in order to provide clarity.
11. The OPBAS area of the FCA website articulates its key objectives for reducing the harm of money laundering and terrorist financing as '1. ensuring a robust and consistently high standard of supervision by the PBSs overseeing the legal and accountancy sectors' and '2. facilitating collaboration and information and intelligence sharing between PBSs, statutory supervisors and law enforcement agencies'. Therefore, the IFA believes that the sourcebook must also include a section that explains OPBAS's second key objective more fully, with the focus on its role of *facilitating collaboration* between the PBSs and others.

a. Chapter 1 (Introduction)

12. This chapter appears to meet the requirement to be succinct and clear. We particularly appreciate the clear statement in paragraph 1.4 that '[t]he sourcebook does not contain rules and is not binding on professional body supervisors'. Nevertheless, the tone of the whole sourcebook must reflect that statement.
13. The concept of 'complying effectively', introduced in paragraph 1.1 and that compliance can be 'more and less effective' (paragraph 1.4) means that the overall status of the sourcebook remains unclear. We believe its value lies in sharing information about how to meet the requirements of the Money Laundering Regulations in an efficient and proportionate manner, which will lead to both better regulation (including AML supervision) and a reduction (rather than an increase) in costs passed on to professionals and their clients.

b. Chapter 2 (OPBAS approach to supervision)

14. It is worth reminding readers of the sourcebook that 'The FCA must have regard to the importance of ensuring that self-regulatory organisations comply with any supervision requirement
 - a. when discharging the FCA's functions under these Regulations; and
 - b. in drafting any guidance in relation to self-regulatory organisations that the FCA may issue under section 139A of FSMA in relation to the MLR.⁴

Instead, the first paragraph of this chapter refers to the objectives of ensuring a robust and consistently high standard of supervision by the PBSs, and facilitating collaboration and information and intelligence sharing. While these are also admirable objectives, it should be recognised that they go beyond the statutory objective of ensuring compliance.

15. We welcome the transparency provided in this chapter in respect of OPBAS's powers and its approach to enforcement. The PBSs have long argued for greater transparency on the part of OPBAS, and we are hopeful to see this in other areas too, including strategy and planning.
16. According to paragraph 2.3, OPBAS's assessment of how a professional body meets its obligations under the Money Laundering Regulations is measured against both the Money Laundering Regulations and the sourcebook. This undermines the claim that the sourcebook provides guidance and is not binding on PBSs.
17. That paragraph goes on to state that OPBAS 'will engage with professional body supervisors outside of assessments to understand the progress they are making against our previous assessment findings'. Without a reference to the nature of this engagement (eg the necessity for, and frequency of, meetings with reference to the outcomes of assessments), this element of oversight does not appear to be risk-based.

⁴ The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017, regulation 3

18. The paragraph on multi-professional body supervisor work does not acknowledge the fact that OPBAS oversees the supervisory work of two distinct professions – the legal and accountancy professions – the latter of which may be further broken down between accountancy, bookkeeping, insolvency and more. We disagree that ‘work on cross-cutting risks or themes can provide an effective way of building understanding of, and addressing, common issues, risks or concerns’, as the work of the supervised populations is so diverse. This is something quite different from gaining a better understanding of ‘how different professional bodies approach a key sector risk’ in a particular sector in order to ‘share best practice and improve the consistency and standard of supervision’, which we would support.
19. This chapter does not explain how OPBAS’s assessment of effectiveness and the ratings provided relate to the FATF’s approach to assessing technical compliance with, and effective implementation of, the FATF Recommendations. Each chapter refers to ‘outcomes’, but the ratings in the effectiveness scale all refer to ‘the outcome’. Therefore, there remains a lack of clarity about what ‘the outcome’ is in each area. If this issue can be resolved, then there remains the question of what minor improvements might be needed where a PBS is consistently achieving ‘the outcome’ (ie is effective).
20. Paragraph 2.8 introduces further uncertainty in claiming that an ‘ineffective’ assessment in one area will negatively impact the assessment of a separate area. A clearer way of reporting OPBAS’s findings would be to provide an overall assessment of a PBS’s effectiveness, which is where the various areas ‘work together to achieve outcomes in the context of the money laundering risks to which the professional body supervisor and its members are exposed’.⁵

c. Chapter 11 (Reporting)

21. Generally, we support the inclusion of guidance on the reporting requirements of regulation 46A in the sourcebook, which would replace the guidance note currently published on the FCA website. However, we believe this chapter of the proposed sourcebook stops short of providing the clarity expected.
22. As stated in the draft sourcebook, regulation 51(1) requires a PBS to ‘collect such information as it considers necessary for the purpose of performing its supervisory functions’ and regulation 51(2) requires a PBS to provide the Treasury with such information as may be specified by the Treasury ‘on request’. While the obligations set out in the Money Laundering Regulations are clear, the proposed statement in paragraph 11.1 – that ‘[t]he timetable and process for the submission will be set by HM Treasury’ appears contrary to the spirit of the guidance. There is an opportunity here for OPBAS to demonstrate its role in collaboration by expressing its intent to agree the timetable and process for the submission following appropriate consultation with HM Treasury and the PBSs. This is particularly relevant when we consider the requirement of regulation 51(2) that the information specified by the Treasury must be ‘for the purpose of enabling the Treasury to perform its functions under these Regulations’.
23. The value of collaboration and consultation is also relevant to paragraph 11.5, the elements of which go beyond the requirements of regulation 46A. Paragraph 11.5 starts with the words ‘A professional body supervisor **should** also include the following ...’ [emphasis added]. Unless the meaning of the word ‘should’ is fully explained, these explanatory paragraphs are of little value.
24. The outcome indicating a more effective approach includes ‘enabling members, stakeholders and the wider public to productively engage with and benefit from the reports’. It would be useful to expand on this to identify who the primary stakeholders are and how the general public would be expected to benefit from the reports.

Question 2: Do you agree that we have identified appropriate outcomes for chapters 3 to 11 of the sourcebook? If not, what outcomes do you think we should include?

25. Please note the comments made in paragraph 19 above regarding the relationship between the outcomes identified in each chapter and the ratings in the effectiveness scale as they are drafted.

⁵ Blackline version of the sourcebook for professional body anti-money laundering supervisors, page 5

Question 3: Do you have any comments on our proposed changes to the existing chapters of sourcebook? If so, what do you think we should change in:

a. Chapter 3 (Governance)?

26. We note that 'Professional bodies should also actively consider and mitigate all other potential conflicts of interests in how they perform their roles' (paragraph 3.1). The words 'actively consider' suggest an action is taken periodically to consider any conflicts. We believe that a more accurate and effective drafting would be a requirement to 'be alert to and mitigate' any actual or potential conflicts of interest, which would entail an ongoing process.
27. Should the requirement for 'clearly defined measurable outcomes' in fact be for 'clearly defined measurable performance indicators and targets consistent with achieving effective AML supervision'? It is not clear that the suggested outcomes in this chapter are measurable. Should this requirement relate to the governing body (presumably the body referred to earlier as the 'governing council') or the PBS?
28. Proposed changes to the sourcebook include many more references to 'senior management', although this term is not defined. However, in the context of paragraph 3.7, it includes individuals 'at board level or equivalent'. This is unnecessarily prescriptive and will have a direct impact on costs, which would otherwise be avoidable.
29. We are concerned that the additional text in respect of the single point of contact (SPOC) is prescribing an extended role for the SPOC, which threatens to increase costs without any evidence that effectiveness will be enhanced in all the PBSs that will incur those costs. The SPOC is the point of contact for other PBSs and law enforcement. It is not relevant that all staff in a PBS should know who the SPOC and deputy (if necessary) are.
30. It is not appropriate that the SPOC should be someone 'at board level or equivalent' (paragraph 3.11). It must be someone more closely involved in AML operations, as is currently the case in most (if not all) PBSs. In fact, paragraph 3.11(b) states that the SPOC should be 'accountable to the professional body board, or equivalent', but the value of Board oversight is diminished where the SPOC is, themselves, a member of the Board.
31. Paragraph 3.13 recognises the risk to a PBS of overreliance on one individual to perform key functions, which is something that *any* business will have in hand and a risk of which we are all very aware in the current climate of low unemployment. To prescribe that a PBS should have 'a documented and periodically reviewed succession plan', and then set out what that succession plan should include (expecting to measure a PBS against this paragraph) extends far beyond OPBAS's responsibility.
32. The second outcome in paragraph 3.14 is 'senior management drives a culture which supports the implementation of a comprehensive framework that effectively identifies and addresses money laundering/terrorist financing risks and meets regulatory objectives'. It appears the key word is 'culture' and so, if this outcome is to remain, it must describe that culture, how it would be measured, and how an organisation's culture can be changed.

b. Chapter 4 (A risk-based approach)?

33. As with all chapters of the sourcebook, OPBAS must ask itself what value is achieved from any additional text. More background information makes the document less accessible and adds nothing to the understanding or effectiveness of the PBSs.
34. Paragraph 4.3, as drafted, refers to a PBS 'proactively engaging with stakeholders in its sector'. What might that entail, given that PBSs already proactively engage with their supervised populations in monitoring AML compliance?
35. The case study, which opens with the words 'A professional body supervisor uses 2 models to risk rate the firms it supervises: an artificial neural network model and a traditional model' is not engaging for the reader and suggests a disproportionately resource-intensive approach to risk assessment.

c. Chapter 5 (Supervision)?

36. More information in respect of 'spent' convictions would be helpful, relating the expectations of OPBAS to the strict requirements of the Money Laundering Regulations.

d. Chapter 6 (Information and intelligence sharing)?

37. The feedback provided to OPBAS by the Accountancy AML Supervisors Group (AASG) in February 2022 on the 'Intelligence and information sharing' Good Practice Note does not appear to have been incorporated into the proposed sourcebook update. For example, OPBAS had suggested that there would be greater clarity regarding thresholds to be included in the PBSs' internal policies.
38. We do not support the drafting of paragraph 6.3 as it does not reflect the understanding and agreement of the PBSs in respect of ongoing investigations into possible misconduct investigations. Our understanding is that it was agreed, at the workshop in February, that the PBSs would share intelligence on concluded AML/CTF related cases where there was a finding. A requirement to upload *all* misconduct investigations would include those where it is found that there is no case to answer, which would be a much wider and more controversial requirement.
39. Paragraph 6.5 appears very prescriptive. In particular, the sentence: 'A professional body supervisor should also identify other relevant intelligence sharing forums to attend and actively contribute to these where possible' has no regard for proportionality.
40. Paragraphs 6.7 and 6.8 are also prescriptive with regard to the use of SIS and FIN-NET. The required outcomes are best achieved by encouraging engagement between the PBSs concerning how such platforms can be used most effectively.
41. We believe there should be recognition in the sourcebook that the PBSs are keen to explore mechanisms to receive information and intelligence back from law enforcement, which is currently not forthcoming.

e. Chapter 7 (Information and guidance for members)?

42. We have nothing to add specifically relating to this chapter.

f. Chapter 8 (Staff competence and training)?

43. We have nothing to add in respect of this chapter, except to reiterate that OPBAS must ask itself what value is achieved from any additional text.

g. Chapter 9 (Enforcement)?

44. The effectiveness scale set out in paragraph 2.7 refers repeatedly to evidence of 'achieving the outcome'. Therefore, the outcomes set out in each chapter must be capable of being evidenced, which is not the case in this chapter. For example, it will not be possible for a smaller PBS to evidence changes in behaviour as a direct result of enforcement action.

h. Chapter 10 (Record keeping and quality assurance)?

45. We have nothing to add specifically relating to this chapter.

Question 4: Do you agree with our analysis of costs in Annex 2 of this consultation? If not, please explain why, providing evidence of costs where possible.

46. This question makes no mention of any evidence of benefits, which is unsurprising given the statement '... we cannot estimate the monetary value of these benefits'.⁶ However, paragraph 11 of Annex 2 goes on to state 'we believe the estimated costs are proportionate to the benefits that will result from more effective PBS AML supervision'. There is, of course, no basis for this belief.
47. Paragraph 6 of Annex 2 includes the estimate that 'the PBSs may look to recruit on average between 0-2 additional hire'.⁷ Perhaps that estimate may be more clearly expressed as an average of 1

⁶ CP22/16, page 12

⁷ Ibid

additional hire, which equates to an estimate of £1.5 million across all 25 PBSs. According to the size of the supervised population disclosed in paragraph 1, that represents an additional cost of £35.71 per individual, which is not insignificant and would result in some accountants ceasing to be members of a professional body and becoming subject to HMRC supervision. (The additional cost per supervised individual could be much higher for the smaller PBSs.)

48. There is a financial cost associated with the administration of ensuring that those accountants migrating to HMRC supervision remain subject to supervision. We believe there is also a non-financial cost in terms of money laundering risk. In the wider context, to the extent that practising accountants cease professional body membership, HMRC comes under greater pressure in its current project to raise standards in tax advice.
49. We assume that the 'cost of additional staff' estimated in Annex 2 of '£60,000 per individual hire' does not include costs such as recruitment, training, pension contributions, relevant IT equipment, etc. Some of these costs are dependent on the employment market, which is currently particularly challenging for employers.
50. Paragraph 2 of Annex 2 states 'The costs associated with the changes we propose in this consultation should be measured as the cost of changes to a PBS's supervisory approach to meet the expectations of effectiveness set out in proposed sourcebook guidance, compared to the costs of effectively meeting existing sourcebook guidance.' The sourcebook is a source of guidance, which is intended to provide clarity and support to PBSs. Intuitively, one might assume that *any* increased costs arising out of intended clarification would indicate a failure.
51. It appears that some PBSs are already supervising effectively and others are not. Statements such as 'PBSs are not yet supervising as effectively as we expect' are unhelpful generalisations, especially when the consultation paper tends to refer to the legal and accountancy sectors as if they were a single sector.⁸ Our conclusion is that the proposed changes to the sourcebook would result in some PBSs (and their members and the general public) suffering additional costs due to weaknesses in the procedures of other PBSs. The role of raising the standard of supervision where necessary – by way of targeted, risk-based oversight - is that of OPBAS. This outcome is best achieved through targeted, risk-based oversight, rather than enhanced guidance that would impose disproportionately burdensome costs on some PBSs.

Conclusion

52. Although we support the objectives of updating the OPBAS sourcebook, if the proposed changes are adopted, the sourcebook will still lack clarity – in particular, regarding its status.
53. We recognise that compliance with the Money Laundering Regulations does not necessarily mean that AML supervision is effective. Nevertheless, it must be recognised that most professional accountancy bodies are very experienced in regulating their members and, therefore, likely to supervise their own supervised populations effectively. Achieving higher levels of effectiveness must never lose sight of the costs and benefits for individual PBSs, and how those costs impact the public interest. The main benefit of the proposed sourcebook changes should be the clear articulation of expected outcomes that a PBS must seek to achieve. Currently, it is unclear which outcomes are expected to be evidenced and which are aspirational.
54. There is a risk that the proposed changes to the sourcebook will be viewed as insignificant in terms of its effectiveness in achieving better outcomes. We are concerned that the consultation paper considers *any* additional costs to be acceptable, as we would not expect an increase in costs to be an outcome of producing effective guidance. The logical conclusion is that the proposed changes to the sourcebook will give rise to further requirements of the PBSs, and that OPBAS will expect the PBSs to make changes so that the updated sourcebook is seen to have an impact. While we recognise the need for OPBAS to be seen to be more effective, we believe that the costs of the proposed changes (financial and non-financial) will outweigh the benefits.

⁸ Eg: 'The findings from our third report make clear that improvement is needed to ensure effective AML supervision in the legal and accountancy sector.' [CP22/16, page 15]

Contact details

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